

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DASHAWN M. ROBERT,

Plaintiff,

v.

VISIONS NIGHTCLUB OWNERS TOM
REICHENBERGER and DAVID BROWN, THE CITY
OF MADISON, ANY INSURANCE COMPANIES
WHO HELD THE POLICY COVERING VISIONS
NIGHT CLUB AND ITS OWNERS, ALPHONSE
REICHENBERGER, and THE REICHENBERGER
ESTATE,

Defendants.

OPINION and ORDER

19-cv-401-wmc¹

Pro se plaintiff Dashawn Robert contends that defendants negligently failed to protect him from injury while he was a patron at Visions Nightclub. I previously dismissed Robert's complaint without prejudice and allowed him to file an amended complaint that states a claim upon which relief can be granted. Robert submitted a proposed amended complaint, Dkt. 21, which I must screen under 28 U.S.C. § 1915.² Robert's amended complaint does not fix the problems I identified, I am dismissing it with prejudice.

ANALYSIS

Plaintiff Dashawn Robert, an Illinois citizen, was a patron at Visions Nightclub on

¹ I am exercising jurisdiction over this case for purposes of this screening order only.

² The court entered a text-only order granting Robert leave to file a second amended complaint by February 27, 2023. Dkt. 19. Because Robert did not submit a second amended complaint or seek additional time to do, I have screened his proposed amended complaint.

December 9, 2018. While there, Robert got into a physical altercation that led to him being stabbed in the right eye and shot in the abdomen. Robert was found in the basement of Visions and taken to a hospital, where he underwent emergency surgery. He sustained severe damage to his intestine, a portion of his stomach was removed, and his liver and kidney were damaged. Robert suffers from Post-Traumatic Stress Disorder because of this incident.

Previously I concluded that if Roberts intended to proceed against the City of Madison under federal law, he could not pursue a claim under *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691 (1978), because Robert was not challenging a policy or custom of the City, and Robert had not alleged that former defendant Rhodes-Conway made any decision related to Visions that led to his injuries. Dkt. 15, at 2-3. I also concluded that Robert's allegations failed to state a claim upon which relief could be granted under state law because he did not satisfy Wisconsin's notice-of-claim requirements as to the City of Madison and Rhodes-Conway, and his allegations did not support negligence claims against Visions, Reichenberger, or Brown. I explained that Wisconsin law does not prohibit an individual from carrying a concealed weapon, nor can an establishment owner be held liable for violence on their premises without evidence of prior violence. *Id.* at 3-5. (citing *Kolstad v. White Birch Inn, LLC*, 314 Wis. 2d 508 ¶ 4, 758 N.W.2d 225 (Table) (Wis. Ct. App. Sept. 16, 2008) (tavern owner not liable for assault that occurred in the parking lot of the establishment because there was no evidence prior to the fight of incidents at the tavern requiring police response).”).

In his amended complaint Roberts repeats his assertion that the owners of Visions were negligent in allowing an unauthorized gun in the establishment, and that the City of Madison was negligent in allowing Visions to operate as a sexually oriented business. But the only new allegations Robert includes are that (1) community members had complained “through the

years” about criminal activity at Visions, which caused Visions to lose its liquor license, and (2) one of the owners, Reichenberger, stated in January of 2019, after Robert was shot, that he intended to hire security with metal detecting wands. These new allegations do not cure the problems I identified. Robert does not allege that he satisfied the notice of claim requirements, nor that the owners of Visions had reason to believe that a weapon would be used at that establishment in December of 2018. His allegation about what one of the owners said after the incident does not show that, before Robert was shot, any of Visions’ owners were aware of, and ignored, a possibility of gun violence there. Because Robert alleges nothing suggesting that before the incidents of December 2018 the owners of Visions knew or should have known that gun violence might occur at Visions without security, his amended complaint fails to state a claim upon which relief can be granted.

Courts should generally give pro se litigants one opportunity to amend a deficient complaint, *see Lewis v. Great Lakes Educ. Loan Servs.*, No. 21-cv-746-wmc, 2023 WL 1861152, at *3 (W.D. Wis. Feb. 9, 2023), but need not grant leave to amend “if it is clear that any amendment would be futile,” *Bogie v. Rosenberg*, 705 F.3d 604, 608 (7th Cir. 2013). Robert’s amended complaint failed to fix the problems with his original complaint, leading me to conclude that any further attempts at amendment to state a federal claim would be futile. I will dismiss the amended complaint with prejudice.

ORDER

IT IS ORDERED that:

1. Plaintiff Robert Dashawn's complaint is DISMISSED with prejudice for failure to state a claim upon which relief can be granted.
2. The clerk of court is directed to enter judgment and close this case.

Entered September 1, 2023.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge